

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In Re: COOK MEDICAL, INC., IVC FILTERS
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

Case No. 1:14-ml-2570-RLY-TAB
MDL No. 2570

This Document Relates to:

Philip Sevene

Civil Case # 1:20-cv-06246-RLY-TAB

**MOTION TO SUBSTITUTE PARTY PLAINTIFF
AND FOR LEAVE TO FILE SECOND AMENDED SHORT FORM COMPLAINT**

COMES NOW, Plaintiff Philip Sevene and files this motion to substitute his surviving daughter, Donna Smith, as the proper plaintiff pursuant to Federal Rule of Civil Procedure 25(a)(1). In support thereof, Plaintiff respectfully shows the court the following:

1. Plaintiff Philip Sevene filed his Original Complaint in the United States District Court for the Southern District of California on August 30, 2020. The case was transferred to the United States District Court for the Southern District of Indiana on October 27, 2020.

2. Plaintiff Philip Sevene died on or about August 18, 2022.

3. On April 4, 2025, Plaintiff filed a suggestion of death pursuant to Federal Rule of Civil Procedure 25(a)(1). *See* Doc. No. 26588. Plaintiff's counsel recently learned of the death of Philip Sevene after contacting his daughter.

4. Donna Smith, surviving daughter of Philip Sevene, is the proper party plaintiff to substitute for Plaintiff-decedent Philip Sevene and to proceed forward with the surviving products liability lawsuit on Plaintiff-decedent's behalf, pursuant to Fed. R. Civ. P. 25(a)(1), stating, "[i]f a

party dies, and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative."

5. Plaintiff thus moves to substitute Donna Smith, as Personal Representative of the Estate of Philip Sevene, Deceased, as Plaintiff in the present action.

6. Plaintiff also moves to amend the Complaint, as well as the caption of the Complaint, to correct the proper Plaintiff (specifically, Donna Smith, as Personal Representative of the Estate of Philip Sevene, Deceased) and to update and include information, allegations, and actions within the Complaint to reflect that Plaintiff Philip Sevene is now deceased.

7. A proposed Second Amended Short Form Complaint is attached hereto as Exhibit "A".

8. Pursuant to Federal Rules of Civil Procedure 15(a)(2), a party may amend its pleading only with the opposing party's written consent or the Court's leave. The Court should freely give leave when justice so requires.

WHEREFORE, counsel for Plaintiff requests this Court for the following relief (1) the Court substitute Donna Smith, as Personal Representative of the Estate of Philip Sevene, Deceased, as Party Plaintiff for Philip Sevene; (2) the Court grant leave to file the attached Second Amended Short Form Complaint (Case 1:20-cv-06246-RLY-TAB); and, (3) the Court deem the attached Second Amended Short Form Complaint filed instanter. A proposed Order is attached hereto as Exhibit "B".

Dated: June 24, 2025.

Respectfully Submitted,

/s/ Ben C. Martin

Ben C. Martin, TX Bar No. 13052400

Ben Martin Law Group, PLLC

3141 Hood Street, Suite 600

Dallas, TX 75219

Tel.: (214) 761-6614

Fax: (214) 744-7590

bmartin@bencmartin.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

/s/ Ben C. Martin

Ben C. Martin